PRIVATE MEMBERS' BILLS

Mysore Co-operative Societes (Amendment) Bill, 1972. — Motion to Considers

SRI M. S. KRISHNAN (Malleswaram) I beg to move that the Mysore Co-operative Societies (Amendment) Bill, 1972 be taken into consideration.

MR. DEPUTY SPEAKER.— Motion moved.

The Mysore Co-operative Societies (Amendment) Bill, 1972 be taken into considnration.

The Bill has been introduced on 29-7-1972.

SRI M. S. KRISHNAN — Sir, this is a Bill which has been brought by me, which concerns the servic conditions governing the Co-operative Societies. In the Staement of Objects and Reasons, it has been made clear that this Bill pertains to the conditions of service governing the employees of the Co-operative Societies. There are a number of disputes concerning the employees of the Co-operative Societies in our State and the Managements of the Co-operative Societies, What has happened is-these disputes have been taken up by the employees either individually or collectively through their associations and they have gone to the Conciliation Officer under the Industrial Disputes Act and the Government have referred some cases to the Industrial Tribunals or Labour Courts. If it is a question of termination of employees' services it gose to labour court and if it is a question of issues like settlement of dearness allowance, etc., it goes to Trib unal, But then, when these things went before the Labour Courts, the Managements of the Societies, through their Advocates have taken up a position that there is no jurisdiction for the Labour Court and the Industria-Tribunals to try these cases. According to them, the Co-operative Societies are governed by the Co operative Societies Act and only in accordance with that Act should the whole thing be taken into consideration. They have pointed out that Section 70 (1) of the Act applies to them and because of that nothing else should apply. Let us go through Section 70 (1) which says such disputes shall be referred to the Registrar for decision. I will read out this portion. "Disputes which may be referred to Registrar for decision.- (1) Notwithstanding any thing contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a Co-operative Society arises- (a) among members, past members and person claming through members, past members and deceased members, or (b) between a members, past member or person claiming through a member, past member or deceeased member and the Society, its committee or any officer, agent or employee of the Society, or (c) between the society, or the its committee and any past committee,

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any officer, agent or employee, or any past officer, past employee or the nominee, heirs or legal representatives of any deceased officer, deceased employee of the society. or (d) between the society and any other Co-operative Society, such dispute shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute. "

Because of this Section, a number of disputes remain unsolved and quite a number of managements went to the High Court and Supreme Court also. Of course, at the time when I brough this Bill – when it was drafted and intrduced-, the position was something different. Section 70 (1) says that no court can go into it This matter has been considered by the Supreme Court. In the case of Andhra Central Co-operative Bank the question arose as to whether the Industrial Tribunals and Courts can take into consideration these cases of employees of Co-operative Societies. In the case of Andhra Central Co-operative Bank in 1969-70- reported in A. I. R. 1970- Page 245-it has been held that in matters relating to the conditions of service, pay scales, etc., of the employees of the Co-operative Societies, the Tribunals have jurisdiction. That is what they held. An objection was raised at that place when it was brought before the Supreme Court; at that time, they said that the exclusive forum is that of the Registrar and anything must be tried only by the Registrar and nobody else has a right to consider these particular disputes. But the Supreme Court took a different view. They took the view that the Registrar is not the person who could alter the contract between the employees and management of the society and that he has to be guied only by the bye-laws of the society. That is what the Supreme Court itself has held in the case ef Andhra Co-operative Bank. They have also given two grounds for this particular decision. They said that the Industrial Tribunal is competent and the Registrar cannot take up such questions. The two grounds are. That the Registrar is solely guided by the Bye-Laws of the Society and the Mysore Co-operative Societies Act. I think the Andhra Co-operative Societies Act is not very much different in content from The Mysore Co-operative Societies Act, though there is slight difference in form. They raised the question: When a dispute of the nature of the pay scale is raised by the employees, can it be considered by the Registrar of the Co-operative Societies and can he decide? The Supreme Court has held: 'No'; 'It cannot be done; it cannot be the exclusive forum of the Registrar'. Similarly, Sir, analagous to this one is the one I told you. Even in the Andhra Societies Act also, they are having the same words; the same words are used. In fact, the Managements harp upon these two words which are contained in 70(1) which reads: Notwithstanding anything contained in any law for the time being in force. if any dispute touching the the constitution

management or the business of a Co-operative Society arises. The said that the business of the Co-operative Society is a matter which should be looked into only by the Regisitrar himself and they also held that the business of the Co-operative Society means conditions of service of the employees and the contract can be gone into and this can be hanged by him. That is the approach that Andhra Co-operative Bank took under . their Act. And, the same words are also there in the Mysore Co-operative Societies Act. There is no difference.

But the Supreme Court held that a dispute regarding the conditions of service of workmen employed by the society cannot be held to be a dispute 'touching' the business of the society. Business of the society meant commercial transactions of the society; what it purchases and what it sells is the business of the society. But to say that the 'business' of the society includes the business relating to the conditions of the employees is not correct. That is what the Supreme Court has held. Even before the Supreme Court decision came, I must say in our own State, there was a conflict of opinion regarding the use of the word 'management' in Section 70(1) which reads: Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the bussness of a Co-opertive Society arises. They said: the word 'management' means employees of the Co-operative Society managing the Co-operative Society and so, we have got right and jurisdiction and no court can question us. That was the view taken by those people who argued on behalf of the managements of the Societies.

Later on it has been held that even that does not apply, In fact, whether dismissal of an employee or termination of service of an employee can be gone into by a labour court is a very moot point. The Supreme Court decision in this Andhra Co-operative Bank Case specifically does not say whether the cases of employees who have been terminated for mis-conduct or any other reasons, whether that could be gone into by the labour courts or tribunals. In the circumstances that also has to be set at rest because confusion is there in the Act and under the guise of the power, they can do anything to do the employee. We should see that the industrial relations will improve and particularly in the Co-operative movement will not be impaired. And quite a number of employees will not get justice and the discontent is bound to increase and ultimately, the Co-operative movement itself will be hampered. From this point of view, I would say that it is necessary that the confusion that may be there, must be cleared by bringing forward an amending Act. This is the most important thing.

Then this matter came up before the Mysose High Court. In the Mysore High Court, there was one decision in the Suratkal Co-operative Bank Ltd. VS Padmanabhiah. Unfortunately the decision was in favour of the management. They said that the industrial taibunals have no jurisdiction. That was in 1968. After that, a number of such cases were

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pending before the High Court and the employees could not get justice and recently we have got two judgements of our own High Court which completely sets at rest all these controversies.

One decision is reported on 12th Oct. 1972 in the Mysore Law Journal. That pertains to Kunnimellihalli Dodda pramanada prathamik pattin vyavasaya Sahakari Sangh Ltd. VS. Shivappa Guddappa Surad. This was a matter which went to the civil court. An employee by name Shivappa Guddappa had been terminated and dismissed by the management and instead of choosing to go to the Industrial Tribunal or the labour court, he went to a civil court for relief. As a lawyer, you are very well aware that civil courts also can go into this matter normally in case of questions of termination and dismissal. But they have not got the right to order relief by way of reinstatement. That is the exclusive authority of the industrial tribunal and labour courts. In this case, he went to the civil court and they have said that they have got jurisdiction the jurisdictsonwas questioned by the management of the Co-operative society. And this question came up before the Mysore High Court before C J Narayan Pie and J. Venkataramiah. They have quoted vasous Supreme Court decisions also and the subsequent 2 decisions of the Supreme court are there, namely the Deccan Merchants Co-operative Bank Ltd. VS Dalichand Jayaraj Jain and Co-operative Central Bank Ltd. VS Addl. Industrial Tribunal.

MR. DEPUTY SPEAKER.—The scope is very clear. The hon. member must confine his speech to the Statement of Objects and Reasons.

SRI M. S. KRISHNAN.—I will not go into greater details.

MR. DEPUTY SPEAKER.—There is only one clause in the Bill.

SRI M. S. KRISHANAN.—In this particular decision, :—

"This civil revision petiton directed against the finding on issue No. 5 in a suit instituted by the respondent against petitioner-co-operative society haa been referren to a Divisiton Bench, because a Bench Ruling of this court in Surathkal Co-operative Town Bank Ltd. V.E. Padmanabhayya (1) appears to be in conflict with the view expressed by the Supreme Court in two subsequent decisions in Deccan Merchants Co-operative Bank Ltd VS. Dalichand Juaraj Jain (2)..."

They have said that the Supreme Court decision prevails.

"In the judgement of this Court referred to above, following a decision of the Bombay High Court, in GIP Railway Employees Co-operative Bank Ltd VS Bhikajji Marwarwanji Karnjia (4), it was pointed out that the word 'touching' has much wider connotation than the expression 'directly related' and that speaking broadly, if a reasonable or logical relationship between a matter in question and the business can be pointed out, it will not be wrong to describe the said matter as a matter touching the business."

In this Hgih Court decision, they have held that the Registrar of Co-operative Societies cannot say that this matter can be taken up only by him and no boby else and it would attract that particular provision namely 'business' and it was held that the Civil Court has got a right to go into this matter: The Civil Revision petition of the Co-operative Society was dismissed. This is the decision of the Mysore High Court.

Another very important and latest decision of the High Court of Mysore was dlivered on 8th February 1973. I do not know whether it has been reported yet or not. This is on the writ petition No. 154 of 1973 of the Workman of the Bangalore City Co-operative Society, Ltd. Bangalore represented by the General Secretary, Co-operative Institutions Employees, Union (Karnatak) No. 7, Balija Hostel. Chamasajapet, Bangalore 18- VS The Management of the Bangalore City Co-operative Society Ltd. Albert Victor Road, Bangalore 18, by its Administrator and The State of Mysore by its Chief Seerretary. The Chief Secretary was also a respondent here. This writ petition arose under acticles 226 and 227 of the Constitution. This went before the Bench of J. Govind Bhat and J. Malimath. The question was whether the workmen of the Bangalore Co-operative Society were justified in demanding enhanced D A as per the Government scales of DA and if not, to what D A they were entitled to.

11.30 A.M.

MR DEPUTY SPEAKER.—The hon. Member need not go through the entire judgment. Let him be brief.

SRI M. S. KRISHNAN —I shall not go into it any further. So, it is also held that an Industrial Tribunal can abjudicate. Now this decision has been given by the Mysore High Court and it sets at rest all the controversies on this matter. The disputes referred to in sub-section (1) of the Co-operative Societies Act are of a different nature : they relate to management, business and constitution. Apart from these disputes, these disputes do not include the disputes under the

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Industrial Disputes Act. Those industrial disputes shall be disposep of in accordance with the Industrial Disputes Act, 1947, so that they are brought in line with the Supreme court decision as well as our own High Court's decision. It may be stated that the Supreme Court has very clearly quetioned the necessity for the incorporation of such a clause. That may be one line of thinking I would submit that that is not correct because the intention of legislation must also be gone into. The intention of legislation is to treat what is provided in section 70 as a sort of exclusive forum. This is because the nature of disputes dealt with can be called civil disputes. Section 70(2) says that no other court shall have jurisdiction. Industrial Tribunal is not a court in the ordinary sense of the term : it is not a civil court which is created by any statute by the Government itself. The intention is very important and it could not be to bring this under the purview of the industrial disputes Act, In the new conditons, in the light of the decision of the Supreme Court, in accomdarce with the principles of natural justice and also in the interest of co-operative movement this must be incorporated in Sec. 70.

The scheme of resolving disputes is to be referred to arbirration by the Registrar under section 10. the resolution of such disputes cannos be done by the Arbitration Court but it must be done by an industrial. tribunal is Another point is that the Registrar is only an adminssrator and more. or less he or also a disector. The question that arises in law is how can he be a judge ? He connot be. It is not fair and he should not be a Judge. This aspect could be left to another forum.

I would also like the Hon. Minister and the Government to consider one more aspect. Justice Gajendragadkar who was the Chairman of the Indian Labour Commission has gone into this aspect and the Commission has said that social justice should be done in a proper manner and the lacunae found in various enactments should be removed. That will do lot of justice to the employees.

† SRI A. SHANKAR ALVA (Minister for Co-operation) .—Mr. Deputy Speaker, it is often said that a lawyer when he is fighting a losing case is really brilliant. I must congratulate the hon. Member who has moved this Bill. He has given a correct exposition of the law His apprehension when he introduced the Bill was that the law is not clear and so it is better to insert one more sub-section in section 70 of the Act. His apprehension at that time was that unless this clause 4 is put in, there might be some difficulties and so he thought it necessary to incorporate that particular clause. I may submit that there is not much scope for misunderstanding or dispute as far as nterpretation of section 70 is concerned. Not only by a reading of the

section but also on account of various decisions of the supreme court and High courts, there is no scope for any misunderstanding. Section 70 was incorporated only for the purpose of seeing that such matters which the Registrar can settle or adjudicate upon are almost of a nature which does not involve questions of law or interpretation just like a civil court. The jurisdiction of the civil court or any other court will not be barred unless it is a very limited matter. In respect of working of a society where there is more or less the question of calculating rupees and paise, absolutely there is nothing else involved. Just for the sake of illustration I would like to submit that a reading of section 70 will be so simple and clause 3 further amplifies what exactly is ment by the operation of this particular section. Section 70 is incorporated here so that much of the time need not be wasted and there must be a decision then and there because as I said earlies, it does not involve any interpretation of section of she Act. Section 70 says

"70. Disputes which may be referred to Registrar for decision. (1) Notwithstanding anything eontained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society arises

(*a*) among members, past members and persons claiming through members, past members and deceased members, or

(*b*) Between a member, past member or person claiming through a member past member or deceased member and the society its committee or any officer, agent or employee of the society, or

(*c*) Between the society or its committee and any past committee any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs, or legal representatives of any deceased officer, deceased employee of the society, or

(*d*) Between the society and any other co-operative society.

Such dispute shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

(2) For thepurposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of a co-operative society, namely

(*a*) A claim by the society for any debt or demand due to it from a member or the nominee, herirs or legal represeutatives of a deceased member, whether such debt or demand be admit ted or not

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(*b*) A claim by a surety against the principal debtor where the society has recovered form the surety any amount in respect of any debt or demand due to it from the principal debtor as a results of the default of the principal debtor whether such debt or demand is admitted or not

(*c*) Any dispute arising in connection with the election of a President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or Member of a committee of the society.

(3) If any question arises whether a dispute referred to the Registrar under this section is a dispute touching the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court."

These are the three types of matters on which the Registrar is called upon to adjudicate, and his action cannot be called in question in any court.

But so far as the present Bill moved by the hon. member is concerned, it is bound to create difficulties. It is stated that wherever matters are concerned with tribunal, the Registrar should not do it. It that is accepted, then every person will say that his dispute concerns industrial tribunal because law is clear. My hon. friend referred to the decision of the Supreme Court For reasons best known to him he did not want it to be pleaced before the House. That clearly defines what the Registrar can do. That is a case relating to Co-op Bank Vs. Industrial Tribunal, Hyderahad and it is reported in A. I. R. 1970 Supreme Court 245. On page 248 they have said.

"Disputes which may be referred to the Registrars

(1) Notwithstanding anything in any law for the time being in force, if any dispute touching the constitution, managemont or the business of a society, other than a dispute regarding disciplinary action tuken by the society or its committee agaianst a paid employee of the society arises

(*a*) Among members, past members and persons claiming through members, past members and deceased members or

(*b*) Between a member past member or person claiming through a member past member or deceased member and the society its committee or any officer, agent or employee of the society or

(c) Between the society or its committee and any past committee any officer, agent or employee or any past officer past agent or past employee or the nominee, heir or legal representative of any deceased officer, deceased agent, or deceased employee of the society or

(d) Between the society and any other society such dispute shall be referred to the Registrar for decision."

Then they mention about section 62 also. While discussing the section they said

"Reliance was placed on the non obstante clause. Notwithstanding anything in any law for the time being in force" occurring in section 61 of the Act which has the effect that a dispute covered by this section must necessarily be referred to the Registrar for decision so that it cannot be referred to any other authority under any other law."

Further they say ;

"... ..It is true that section 61 by itself does not contain any clear indication that the Registrar cannot entertain a dispute relating to alteration of conditions of service of the employees of a registered society; but the meaning given to the expression 'touching the business of the society', in our opinion, makes it very doubtful whether a dispute in respect of alteration of conditions of service can be held to be covered by this expression. Since the word 'business' isequated with the actule trading or commercial or other similar business activity of the society, and since it has been held that it would be difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying out its objects, such as laying dywn the conditions of service of employees, can be said to be a part of its business, it would appear that a dispute relating to conidions of its service of the workmen employed by the society cannot be held to be a dispute touching the business of the society. Further, the position is clarified by the provisions of sub-section (4) of Section 62 of the Aet which limit the power to be exercised by the Registrar, when dealing with a dispute referred to him under section 61, by a mandate that he shall decide the dispute in accordance with the provisions of the Act and the rules and bye-laws ....."

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.....the Registrar or orther person dealing with it under section 62 of the Act is not competent to grant the relief claimed by the workmen at all.....

So, they have defined the import of these words and only those things which they have decided will be dealt be the Registrar. My hon. faiend referred to the latest decision of the Mysore High Court reported in the Law Journal 372. Absulttely there is nothing that needs to be clarified and section 70 as it stanes, is quite compact and further my submission is that it is absolutely not necessary to say that in civil cases the jurisdication of the Registrar can be questioned. The jurisdiction of the Registrar is defined and he cannot travel beyond the ambit of this section. These are simple matters and they can give decisions then and there so that there is no ambiguity. There is no scope to have another section to say that matters relating to tribunals must be a separate thing.

I say there is no need to have this Bill and it will only create complications and unnecessary difficulties and hence I cannot accept the Bill. I am sure that the House will reject the Bill.

SRI M. S. KRISHNAN:— Sir, is there nobody else to speak on this. I know there are some other members who want to speak.

MR. DEPUTY SPEAKER:— When I waited for some time to see if some other hon. members might speak on the Bill after the speech by Sri. Krishnan, nobody stood up I had to call upon the Hon. Minister to reply. Now that the Hon. Minister has replied hon. member can offer his final remarks about the Bill.

SRI M. S. KRISHNAN:— I have carefully gone through what the Hon. Minister stated. I am really surprised and very much pained to see that the Hon. Minister should have taken such a position. I was trying to find out what would be the waighty arguments he would advance to reject the Bill. He was tryiug to quote a decision which is already known. There is no point in quoting that particular decision. The point here is whether it necessitate a change in the Co-operative Societies Act or not. That is the most important point. On that question, the Hon. Minister said that it creates unnecessary complication and difficulties. I am really surprised to hear this because how could an amending Bill create difficulties? On the other hand, all the difficulties are going to be set at rest. The Supreme Court has pointed out that there is lacuna in the co-operative societies Act in relation to the manner in which the disputes in respect of employees are settled. But the Hon. Minister says that the Act is very clear. But despite that this question has gone to the labour court, tribunal and Supreme Court etc. and that ifself shows that the way in which the whole thing

is framed is defective. The intention of the legislatore might be that these of disputes should not come under the purview of the co-operative societies Act. But still the whole thing went to the Supreme Court. Under the circumstances the Suprame Court has pointed out the lacuna. When once the lacuna is pointed out is it not the bounden duty of the Government to see that the Act is suitably changed to fill that lacuna. Was such athing not done in this House in respect of other decisions of the courts? Now I am constained to say that the Members on the other side are not prepared to concede this point in this case. If the Hon. Minister had st ted that he will study and he will bring an amending Act I would have been very happy. But he has said that he is rejecting the Bill.

12-00 NOON.

SRI A. SHANKARA ALVA:— The Supreme Court have stated that the Registrar can addiujate in respect of certain matters. I do not know what lacuna is there. There is no lacuna.

SRI M. S. KRISHNAN: — The Supreme Court has also stated their views in several decions. Landlords in our country have interpreted the Land Reforms Bill in so many ways, people went to Court, and the Supreme Court held that the provisions had to be interprete i in a different manner. In the light of that interpretation, the Kerala Govoernment has changed the laws. I know amending Acts have been brought here also. If there is an amendment on the lines proposed in my Biil that these aspects must be looked after by the Registrar and other aspects under the Industrial Disputes Act, it makes the entire clause very clear. Othere wise therewill be no co-operation from the employees. Even now. I humbly submit that the Hon'ble Minister has got to reconsider his position. If he is not going to reconsider I am not prepared to withdraw and I stick on to the amendind Bili which I have moved for consideration.

SRI A. SHANKARA HLVA:— There ss nothing to reconsider.

MR. DEPUTY SPEAKER:— The question is:—

"That the Mysore Co-operat ve Societies (Amendment) Bill, 1972 be taken in to consideration."

THE HOUSE DIVIDED

MR. DEPUTY SPEAKER:— The result of the division is:— Ayes ... 13; Noes ... 47. The "Noes" have it.

The motion was negatived.